

Application No.: 10/642,526

Docket No.: SPINE 3.0-437  
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**IN THE DRAWINGS**

In the Official Action, the drawings were rejected to because of the omission of a reference character. In response to this, Applicant submits herewith an annotated sheet showing changes made.

Attachment: One Replacement Sheet regarding FIG. 8e.

REMARKS

The present amendments and remarks are in response to the Official Action mailed August 1, 2005.

A petition for a one-month extension of the shortened statutory time period for response to said Official Action up to and including December 1, 2005, is transmitted herewith.

In the Official Action, the Examiner has objected to the claim of priority included within the first paragraph of the present application. In response to this objection, Applicants hereby submit a substituted specification clearly outlining the claim to priority.

In the Official Action, the drawings are objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they include reference characters that are not mentioned in the description. In response to this objection, as previously stated, Applicants submit a supplemental specification which includes the reference characters previously omitted. No new matter has been added by this substituted specification.

In addition, an annotated sheet showing changes to FIG. 8e is submitted herewith.

In addition, pursuant to the Examiner's request, the substituted specification includes additional amendments eliminating minor errors in the application. No new matter has been added to the application by these amendments.

In the Official Action, claims 1, 3-7 9-14, and 16-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,370,697 to *Baumgartner*. Claims 2, 8 and 15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Baumgartner* in view of U.S. Patent No. 5,926,685 to *Krebs et al.*

Further, claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over claims 1-4, 8, 11-14, and 18 of copending Application No. 10/642,522. And claims 1, 3 4-7, 9-14 and 17-20 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1, 2, and 6 of U.S. Patent No. 6,863,689. Claims 1-20 are also provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 8, 11-14 and 18 of copending Application No. 10/642,529.

In response to these rejections, Applicants have cancelled claims 1-20 and hereby submit new claims.

Newly-added claims 21-37 are directed to a raised portion having a plurality of plateaus disposed on an outwardly-facing surface of the artificial disc. Ample support for claims 21-37 are shown in the figures and specifically FIGS. 11i, 11j, as well as 8x and 8y, for example. Applicants have amended the substituted specification to include a description more clearly defining what is shown in the figures. No new matter has been added by this substituted specification. Thus, no new matter has been introduced to the application as a result of newly-added claims 21-37.

Newly-added independent claims 21 and 30 include the recitation wherein an outwardly-facing surface of the artificial disc includes a raised portion having a plurality of discrete plateaus. These limitations are not shown in either *Baumgartner, Ralph* or *Krebs*. The discrete plateaus provide the artificial disc with an engagement mechanism for securing the artificial disc to a surface of a vertebrae such that the artificial disc does not become dislodged once inserted between adjacent vertebrae. Applicants assert that newly-added claims 21-37 are in condition for allowance and should be deemed patentable.

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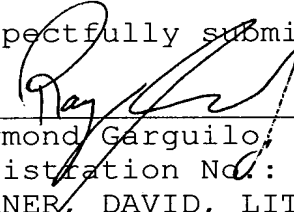
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 7, 2005

Respectfully submitted,

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